

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

v.

PAUL SHARP

RESPONDENT,

APPELLANT.

**DOCKET NUMBER WD71895
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 31, 2011

Appeal From:

Buchanan County Circuit Court
The Honorable Daniel Fred Kellogg, Judge

Appellate Judges:

Division Four: Lisa White Hardwick, P.J., James M. Smart, Jr., J., and Patricia Joyce, Sp.J.

Attorneys:

Shaun J. Mackelprang and Daniel McPherson, Jefferson City, MO, for respondent.

Craig Allan Johnston, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

PAUL SHARP,

APPELLANT.

No. WD71895

Buchanan County

Before Division Four: Lisa White Hardwick, P.J., James M. Smart, Jr., J., and Patricia Joyce, Sp.J.

Paul Sharp was charged with second-degree assault for extinguishing a lit cigarette on the hand of a corrections officer. At the time of the offense, Sharp was an inmate at the Western Reception Diagnostic Correctional Center in St. Joseph. In November 2008, Sharp filed a *pro se* request for speedy trial under the Uniform Mandatory Disposition of Detainers Law (“UMDDL”) while he was an inmate at the Northeast Correctional Center in Bowling Green, Missouri. A few days later, the prosecutor filed a writ of habeas corpus *ad prosequendum*. A detainer was sent to the Buchanan County sheriff’s department and the Northeast Correctional Center on December 24, 2008. An arraignment was scheduled and Sharp entered a plea of not guilty.

In June 2009, defense counsel filed a motion to dismiss alleging that the State failed to bring Sharp to trial within 180 days under the UMDDL. The trial date was set for December 2009. The prosecutor filed an amended information charging Sharp with an alternative count for second-degree assault under section 565.082, RSMo, a class C felony. Sharp was convicted after a bench-trial on the alternative count of second-degree assault.

On appeal, Sharp claimed the trial court erred in denying his motion to dismiss because the court exceeded its authority in violation of the UMDDL by failing to bring him to trial within 180 days.

Sharp also claimed the trial court erred in denying his motion for judgment of acquittal at the close of all the evidence and in entering judgment and sentence for second-degree assault on a corrections officer in violation of his due process rights and the right to be free from *ex-post facto* laws. Sharp contends that he could not have been convicted of the crime as alleged in the amended information because the charged offense was based on statutory language that was not in effect at the time of the offense in 2007.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR RESENTENCING.

Division Four holds: (1) The trial court did not err in denying Sharp's motion to dismiss because he did not substantially comply with the requirements under the UMDDL in that there was no detainer lodged against him at the time he filed his request for speedy trial and no proof of certification by the director of the Department of Corrections. Even assuming, *arguendo*, that defense counsel's motion to dismiss was sufficient to trigger the 180 days, the time limit expired after the trial date. As to this issue, the judgment is affirmed.

(2) The trial court erred in finding Sharp guilty of second-degree assault under section 565.082 because the pre-amended statute did not expressly include "corrections officers" within the statutory language. However, the evidence was sufficient to find Sharp guilty for the lesser-included offense of third-degree assault under section 565.070.1(1). As to this issue, we reverse and remand for resentencing.

Opinion by James M. Smart, Jr., Judge

May 31, 2011

This summary is UNOFFICIAL and should not be quoted or cited.
